APPENDIX

STATUTES INVOLVED

Revised Statutes:

SEC. 3226 [as amended by Sec. 1113 of the Revenue Act of 1926, c. 27, 44 Stat. 9]. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail.

Sec. 3226, Revised Statutes, was later amended by Sec. 1103, Revenue Act of 1932, 47 Stat. 169, and by Sec. 807, Revenue Act of 1936, 49 Stat. 1648. (See U. S. C., Title 26, Secs. 1672–1673 for Sec. 3226, Revised Statutes, as amended.) However, in suits for the recovery of taxes instituted after the enactment of those amendments, where the claim for refund or credit was disallowed before June 6, 1932, the statute of limitations as previously provided by Sec. 3226 remains the same. See Sec. 1103 (b), Revenue Act of 1932.[11]

> SEC. 3228 [as amended by Sec. 1112 of the Revenue Act of 1926, c. 27, 44 Stat. 9, Sec. 619 of the Revenue Act of 1928, c. 852, 45 Stat. 791, and Sec. 1106 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 287]. (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of taxes other than income, war-profits, excess-profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four

[11] Thus a disallowance before June 6, 1932 (date of passage of the Revenue Act of 1932), was effective even though the Commissioner sent taxpayer no notice. *United States* v. *Michel*, 282 U. S. 656.

years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

(b) Except as provided in section 284 of the Revenue Act of 1926, claims for credit or refund (other than claims in respect of taxes imposed by the Revenue Act of 1916, the Revenue Act of 1917, or the Revenue Act of 1918) which at the time of the enactment of the Revenue Act of 1921 were barred from allowance by the period of limitations then in existence, shall not be allowed. (U. S. C., Title 26, Sec. 1433.)

The same provisions appear as Section 3313 of the Internal Revenue Code (U. S. C., Supp. V., Title 26, Sec. 3313).

Revenue Act of 1921, 42 Stat. 227:

SEC. 252. That if, upon examination of any return of income made pursuant to this Act, * * * the Revenue Act of 1917, or the Revenue Act of 1918, it appears that an amount of income, war-profits, or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided,* That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer: * * *

Sec. 281, Revenue Act of 1924, 43 Stat. 253, and Sec. 284, Revenue Act of 1926, 44 Stat. 9, are substantially similar to Sec. 252, Revenue Act of 1921, quoted above, save that the two latter Acts provide that no credit or refund shall be allowed or made *after four years* from the time the tax *was paid* in the case of a tax imposed *by a prior Act,* unless before the expiration of that time taxpayer filed its claim for refund.

Judicial Code:

> SEC. 145. The Court of Claims shall have jurisdiction to hear and determine the following matters:
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> First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity or admiralty if the United States were suable: * * *
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> (U. S. C., Title 28, Sec. 250.)

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